

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

LASHUNDRA JACKSON

Plaintiff,

STATE OF ALABAMA DEPARTMENT OF  
TRANSPORTATION, JOE MCINNES, IN HIS  
OFFICIAL CAPACITY AS DIRECTOR OF THE  
STATE OF ALABAMA DEPARTMENT OF  
TRANSPORTATION

Defendants.





























CASE NO.: 2:07-CV-645-MEF

## PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

On July 14, 2008, this Court issued an order for Plaintiff's counsel to show cause as to why he had not filed the "Notice Concerning Settlement Conference and Mediation" that was due to be filed in this Court by June 27, 2008. In response to this Order, Plaintiff's counsel states as follows:

1. This Court entered its Uniform Scheduling Order on September 21, 2007. Doc. no. 13. On September 29, 2007, Plaintiff's counsel entered the deadlines from the Scheduling Order onto his calendar, which is maintained in a software package called Amicus. Exhibit 1 (screen shot of Amicus calendar page). One of the deadlines Plaintiff's counsel calendared on that date was the deadline for the submission of the Notice of Settlement Conference. *Id.* The calendar entry for the deadline reflects that it was "last modified on Sat Sep 29, 2007 9:47 AM by Kell Simon." *Id.*

2. Pursuant to the Court's Order, the parties conducted their face to face settlement conference on June 20, 2008. This was the third day of the depositions of defendant's witnesses, and the

parties met in person to discuss settlement. During that settlement conference, counsel for Defendants agreed to draft the Notice of Settlement Conference.

3. On the morning of June 27, 2008, the undersigned counsel sent an e-mail to counsel for Defendants, asking him if he had prepared the notice of settlement conference, and reminding him that it was due that day. Exhibit 2 (e-mail from Kell Simon to Andy Redd).

4. Counsel for Defendants then e-mailed a draft of the Notice to Plaintiff's counsel. Exh. 3 (e-mail from Andy Redd to Kell Simon). In the e-mail, counsel for Defendants stated: "This notice to court should be sufficient. If you wish to change or add anything, let me know. We will file it today." *Id.* Plaintiff then sent an e-mail approving the draft and stating "please file." Exh. 4 (e-mail from Kell Simon to Andy Redd).

5. Counsel for Defendant acknowledges in his Response to Court's Order (doc. no. 34) that he had agreed to file the Notice. As reflected in Defendants' Response to Court's Order, Defendants' failure to file the Notice was an oversight on their part.

6. The undersigned counsel acknowledges that the Uniform Scheduling Order required him to file the Notice by June 27, 2008. The undersigned further acknowledges that after Defendant's counsel stated he would file the Notice, the undersigned counsel removed that item from his list of pending matters, and did not check to make sure that Defendant had filed the Notice. The undersigned counsel's failure to check to make sure the Notice had been filed was an oversight, and was not wilful.

7. Given the foregoing, the undersigned counsel requests that this Court not sanction him for failing to file the Notice. The undersigned counsel was aware of the deadline to file the Notice, and calendared that deadline when the Uniform Scheduling Order was initially entered. Counsel had their

settlement conference by the deadline, and, after Defendant's counsel agreed to draft the Notice, the undersigned counsel reminded him of the need to file it on the day it was due. The undersigned counsel then relied on Defendant's counsel's representation that he would file the Notice. Both the undersigned counsel and counsel for Defendant have acknowledged that the late filing of the Notice was the result of inadvertence on both of their parts.

WHEREFORE, premises considered, the undersigned counsel for Plaintiff requests that this Court not sanction him for the late filing of the Notice Concerning Settlement Conference and Mediation.

Respectfully submitted  
ROSS LAW, P.C.  
1104 San Antonio Street  
Austin, Texas 78701  
Telephone: 512/474-7677  
Facsimile: 512/474-5306

s/ Kell A. Simon  
Kell Simon  
Alabama State Bar No.: ASB-0214-O77K

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 18<sup>th</sup> day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification to the following:

Jim R. Ippolito, Jr.  
Andrew W. Redd  
Jason A. Trippe  
State of Alabama Department of Transportation  
1409 Coliseum Boulevard  
Montgomery, Alabama 36110

s/ Kell A. Simon  
Of counsel

# Plaintiff's Exhibit 1

**Event Details**

Title:  ☐ Critical

Date:  Time:  to

File:

Contact:

Assigned:

Repeat:  Link:

Assist:

Notes:

Buttons: Delete, Print, Repeat, Lock, Calendar, OK, Cancel

Last modified on Sat, Sep 29, 2007 9:47 AM by Kell Simon

Thu ◀ Friday June 27, 2008 ▶ Sat

Earlier

07 6:30 - 8 Norman - PPM Report

Norman, Chris 56324

08 8:15 - 8:45 REMINDER - JULY 11 IS ATKINS CHARGE FILING DATE

09 9 - 10:30 PPM Deadline for Cody v. Bulwark

10 Cody et al v. Bulwark 56445

11 11 - 11:30 AVRIL WHITE DISCOVERY RESPONSES DUE

12 11:30 - 1 Mike Barry here(cancelled)

Barry, Michael 56471

01

02 2 - 2:30 Debby Akc - Intake (30)-Moved up to 2pm

03

04

05 4:30 - 5 Review and post your time entries

06

07

08

Later

TODAY  
WEEK  
MONTH  
YEAR  
EVENTS  
GROUP

# Plaintiff's Exhibit 2

## Kell Simon

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**From:** Kell Simon  
**Sent:** Friday, June 27, 2008 7:39 AM  
**To:** 'Redd, Andrew W.'  
**Subject:** RE: LaShunda Jackson case

Andy -  
Have you prepared the ADR report for Jackson?  
It's due today.  
Kell

Kell Simon  
Ross|Melton P.C.  
1104 San Antonio St.  
Austin, Texas 78701  
phone 512-474-7677 fax 512-474-5306  
[ksimon@rosslawpc.com](mailto:ksimon@rosslawpc.com)

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# Plaintiff's Exhibit 3



## Kell Simon

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**From:** Redd, Andrew W. [redda@dot.state.al.us]  
**Sent:** Friday, June 27, 2008 8:02 AM  
**To:** Kell Simon  
**Subject:** Please review '94982'  
**Follow Up Flag:** Review  
**Flag Status:** Flagged

Kell:

This notice to court should be sufficient. If you wish to change or add anything, let me know. We will file it today.

We are checking with Morris and Dietz on deposition dates. Based on your e-mail, the weeks of August 4 and 11 are the available times for you so we will check on some dates during those weeks.

A. Redd

---

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From: [reda@dot.state.al.us](mailto:reda@dot.state.al.us)

*You received this message because the sender is on your allow list.*

7/16/2008

# Plaintiff's Exhibit 4

**Kell Simon**

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**From:** Kell Simon  
**Sent:** Friday, June 27, 2008 8:08 AM  
**To:** 'Redd, Andrew W.'  
**Subject:** RE: Please review '94982'

Looks good to me - please file.

Are you checking on dates for Dan Morris and Sandi, or should I just pick some and notice the depositions and have Dan served?

Kell Simon  
Ross|Melton P.C.  
1104 San Antonio St.  
Austin, Texas 78701  
phone 512-474-7677 fax 512-474-5306  
[ksimon@rosslawpc.com](mailto:ksimon@rosslawpc.com)

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**From:** Redd, Andrew W. [<mailto:reda@dot.state.al.us>]  
**Sent:** Friday, June 27, 2008 8:02 AM  
**To:** Kell Simon  
**Subject:** Please review '94982'

Kell:

This notice to court should be sufficient. If you wish to change or add anything, let me know. We will file it today.

We are checking with Morris and Dietz on deposition dates. Based on your e-mail, the weeks of August 4 and 11 are the available times for you so we will check on some dates during those weeks.

A. Redd

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7/17/2008

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